

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)	
<i>ex rel.</i> JOHN DOE,)	
)	
Plaintiff/Relator,)	
)	
v.)	NO.: 21-cv-224-CMH-IDD
)	
CREDIT SUISSE AG,)	
)	
Defendant.)	

THE UNITED STATES' RESPONSE IN OPPOSITION TO THE RELATOR'S
MOTION TO CONTINUE HEARING

The United States opposes the Relator's motion to continue the hearing currently set for December 3, 2021 until January 14, 2022.

The Relator seeks a continuance of over five weeks. Dkt. No. 24. This substantial continuance is not warranted because the Relator has not specifically shown that all of his counsel are unavailable on December 3, 2021 or shortly thereafter. Importantly, based on other filings the Relator has made to date, *e.g.*, Dkt. No. 27 at 2, the Relator's request for continuance appears to be based on his mistaken assumption that he is entitled to an evidentiary hearing before the Court can act on the United States' motion to dismiss under 31 U.S.C. § 3730(c)(2)(A).

Section 3730(c)(2)(A) provides for "an opportunity for a hearing" on the Government's motion to dismiss a *qui tam* action. The D.C. Circuit has explained that the function of the hearing "is simply to give the relator a formal opportunity to convince the government not to end

the case.” *Swift v. United States*, 318 F3d 250, 253 (D.C. Cir. 2003). Citing *Swift*, this Court previously held:

[t]he Government’s entitlement to dismiss a False Claims Act case over the objection of a relator is clear and unambiguous; and the reference to a hearing must be construed consistently with that entitlement and not in a way that materially abrogates its right of control over the claim.

United States ex rel. Henneberger v. Ticom Geomatics, Inc., 427 F. Supp. 3d 701, 704 (E.D. Va. 2019). In fact, courts have routinely held that § 3730(c)(2)(A)’s opportunity to be heard is satisfied upon the Relator’s submission of a written opposition to dismissal. *E.g.*, *United States ex rel. Sibley v. Delta Reg’l Med. Ctr.*, No. 417CV000053GHDRP, 2019 WL 1305069, at *10 (N.D. Miss. Mar. 21, 2019) (“As numerous courts have held, the hearing requirement is satisfied by allowing the relator an opportunity to submit a response to the motion.” (internal quotations and citations omitted)); *United States ex rel. May v. City of Dallas*, No. 3:13-CV-4194-N-BN, 2014 WL 5454819, at *4 (N.D. Tex. Oct. 27, 2014) (“Under 31 U.S.C. § 3730(c)(2)(A), a relator is entitled to ‘an opportunity for a hearing on the motion [to dismiss].’ As the undersigned noted in affording Relator an opportunity to respond to the motion to dismiss, the hearing requirement is satisfied by allowing the relator an opportunity to submit a response to the motion[.]” (citations omitted)).

In this case, the Relator has filed an opposition to the motion to dismiss, which the Court will have an opportunity to consider before ruling on the United States’ motion. The United States also engaged extensively with the Relator before filing its motion to dismiss and made the decision to dismiss the case notwithstanding the Relator’s objections. Having reviewed the Relator’s opposition to the motion to dismiss, the United States maintains its

decision to dismiss the case. As a result, the Court may decide the matter on the papers, as no evidentiary hearing, or other hearing requiring the appearance of the parties, is required as a matter of law or practice. And, to the extent the Court would prefer to hear further argument from the parties, absent a more specific showing by the Relator's counsel, either December 3, 2021 or at a date certain promptly thereafter, is reasonable.

CONCLUSION

For the foregoing reasons, the United States requests that the Motion be denied.

Dated: November 23, 2021

Respectfully submitted,

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